

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

CATHERINE ALEXANDER,

Plaintiff,

-vs-

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA, INC.,

Defendants.

Case No. 3:18-cv-966-SMY-MAB

JOINT MOTION TO CONTINUE PRESUMPTIVE TRIAL DATE

Plaintiff Catherine Alexander ("Plaintiff") and Defendants Take-Two Interactive Software, Inc., 2K Games, Inc., 2K Sports, Inc., Visual Concepts Entertainment ("Take-Two Defendants"), World Wrestling Entertainment, Inc., Yuke's Co., Ltd., and Yuke's LA, Inc. (collectively "Defendants," and together with Plaintiff, the "Parties"), by and through their attorneys, hereby jointly move this Court to continue the trial date in this litigation to a date of the Court's convenience in April 2020. In support of this motion, the Parties state as follows:

Procedural Background

1. Since the inception of this case, counsel for Plaintiff and Defendants have been working cooperatively and efficiently.

2. On April 17, 2018, Plaintiff initiated the present action against Defendants, alleging one count of copyright infringement. Dkt. No. 1. The case was assigned to Chief Judge Reagan the following day. *See* Dkt. No. 13.

3. On May 15, 2018, the Court entered an order assigning this case to CJRA Track B, setting a presumptive jury trial date of May 13, 2019 and final pretrial conference for May 3, 2019. *See* Dkt. No. 39.

4. The Parties participated in a scheduling conference before Magistrate Judge Wilkerson on July 12, 2018, *see* Dkt. No. 53, and on August 7, 2018, the Court entered a scheduling order under which discovery would be completed by January 7, 2019, and dispositive motions filed by January 21, 2019. *See* Dkt. No. 54.

Pending Motions

5. Defendants moved to dismiss Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) on July 9, 2018. *See* Dkt. Nos. 49–52. Plaintiff filed her opposition on August 8, 2018. Dkt. No. 57.

6. Plaintiff then moved for leave to file an amended complaint, and on October 2, 2018, Plaintiff filed her Amended Complaint in this action, to which Defendants consented. *See* Dkt. Nos. 65, 73, 76. In light of the Amended Complaint, the Court dismissed as moot Defendants' initial motions to dismiss. *See* Dkt. No. 93.

7. On October 23, 2018, however, all Defendants moved to dismiss Plaintiff's copyright infringement claim in her Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), *see* Dkt. Nos. 89–90, and Defendants Yuke's Co., Ltd., Yuke's LA, Inc., and World Wrestling Entertainment, Inc. ("Jurisdictional Defendants") moved to dismiss the Amended Complaint on the additional ground that they are not subject to personal jurisdiction pursuant to Rule 12(b)(2). *See* Dkt. Nos. 89–92. Plaintiff filed her opposition to the Defendants' motion to dismiss and the Jurisdictional Defendants' motion to dismiss on November 21, 2018. Dkt. No. 97. These motions to dismiss are fully briefed and currently pending.

8. Jurisdictional Defendants also moved to stay discovery in light of the pending motions to dismiss. *See* Dkt. No. 78. Plaintiff filed her opposition on October 25, 2018. Dkt. No. 94. The motion to stay is also fully briefed and currently pending.

9. The Parties began discovery, but due to the Defendants' pending motions, certain other discovery-related issues, and scheduling conflicts over the holiday season, on December 5, 2018, the Parties jointly requested that the Court enter a revised scheduling order, providing additional time for the completion of discovery and adjourning the trial to a later date agreeable to the Court. *See* Dkt. No. 103. That motion is currently pending.

10. The Parties were scheduled for a settlement hearing before Chief Judge Reagan on Tuesday, March 26, 2019, during which they intended to raise the three pending motions and the case schedule, and in particular, request that the Court postpone the presumptive trial date to a later period. On March 22, 2019, however, Judge Reagan cancelled the settlement hearing. *See* Dkt. No. 113.

The Trial in this Litigation Should Be Continued

11. Following Chief Judge Reagan's retirement, this case was reassigned on April 1, 2019. *See* Dkt. No. 114. On April 4, 2019, the Court entered an order resetting the presumptive trial date for the original date of May 13, 2019. Dkt. No. 115.

12. The Parties agree that an extension of the trial date to April 2020 would be beneficial to all Parties for numerous reasons. First, an extension would give the Court time to consider and rule on the pending motions to dismiss, which will provide guidance as to both the scope of the case and whether Jurisdictional Defendants are even subject to jurisdiction before the Court.

13. Second, because their motions to dismiss remain pending, none of the Defendants have yet filed an answer to Plaintiff's Amended Complaint. Continuing the trial date to April 2020 will enable the Defendants to answer, to the extent they remain in the case, and give Plaintiff sufficient time to review Defendants' responses to her allegations, consider whether additional discovery is needed, and ultimately prepare for trial.

14. Third, the Parties have not yet finished discovery. While most written discovery has been served, one deposition has been taken (the deposition of Plaintiff), and ten expert reports have been exchanged, the Parties need to complete documentary discovery and schedule the remaining depositions of fact and expert witnesses. However, the Parties note that Jurisdictional Defendants have not yet engaged in substantive discovery to the same extent as the Take-Two Defendants in light of their pending motions to dismiss and motion to stay. Continuing the trial date will permit Jurisdictional Defendants to complete written discovery, document production, and outstanding depositions, if necessary.

15. Fourth, continuing the trial date to April 2020 would provide time for the Parties to file and the Court to consider potential dispositive motions, including motions for summary judgment, and any other pre-trial motions.

16. Finally, an April 2020 trial date would avoid conflicts with several previously scheduled events during the fall of 2019. This includes two multi-week trials scheduled during that period for counsel for Take-Two. In addition, Take-Two Defendants' lead counsel, Dale Cendali, teaches a fall semester class at Harvard Law School, requiring her to be in Cambridge, Massachusetts each week during the fall. It would also avoid any conflicts during the holiday season. In addition, Plaintiff's lead counsel has four week- or multi-week long trials scheduled

for the fall of 2019 as well as three week- or multi-week trials scheduled for the winter of 2019/2020.

17. As a result of the foregoing, the Parties respectfully request that this Court continue the trial of this matter to April 2020, and permit the Parties to submit a revised scheduling order to the Court based on the Court's selected trial date.

WHEREFORE, Plaintiff and Defendants pray that this Court grant the Motion to Continue Presumptive Trial Date and enter an order scheduling this matter for trial in April 2020 and any further relief this Court deems appropriate.

Dated: April 12, 2019

THE SIMON LAW FIRM, P.C.

/s/ Anthony G. Simon (with consent)

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2019, I electronically filed the foregoing **Joint Motion to Continue Presumptive Trial Date** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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